

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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: **Chapter 11**
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In re : **Case No. 08-12229 (MFW)**
:
WASHINGTON MUTUAL, INC., et al., : **(Jointly Administered)**
:
Debtors. :
:
:
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**THIRD MODIFICATION OF MODIFIED SIXTH AMENDED
JOINT PLAN OF AFFILIATED DEBTORS PURSUANT TO
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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Dated: August 10, 2011

Washington Mutual, Inc. and WMI Investment Corp. hereby modify the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated February 7, 2011, as amended (the “Plan”),¹ as follows:

1. Article XXIII of the Plan, entitled “*Provision for Treatment of REIT Series (Class 19)*”, is hereby amended by inserting the following at the conclusion thereof:

“23.3 **Limitation on Recovery:** Notwithstanding anything contained herein to the contrary, including, without limitation, the distributions to be made to a holder of REIT Series in accordance with Section 23.1 of the Plan, in the event that the sum of distributions of Cash received on account of Liquidating Trust Interests in accordance with Section 23.1 are equal to or in excess of one hundred percent (100%) of the fixed liquidation preference of such holder’s REIT Series, then the Cash received on account of Liquidating Trust Interests that is distributable to such holder in excess of such one hundred percent (100%) shall be deemed redistributed to, and shared on a *pari passu* basis among, holders of Common Equity Interests and, unless otherwise determined, pursuant to a Final Order, that holders of Dime Warrants hold Allowed Claims and such Allowed Claims are not otherwise subordinated in accordance with section 510 of the Bankruptcy Code, holders of Dime Warrants.”

2. Articles XXIV of the Plan, entitled “*Provision for Treatment of Preferred Equity Interests (Class 20)*”, is hereby amended by inserting the following at the conclusion thereof:

“24.3 **Limitation on Recovery:** Notwithstanding anything contained herein to the contrary, including, without limitation, the distributions to be made to a holder of a Preferred Equity Interest in accordance with Section 24.1 of the Plan, in the event that the sum of distributions of Cash received on account of Liquidating Trust Interests in accordance with Section 24.1 are equal to or in excess of one hundred percent (100%) of the fixed liquidation preference of such holder’s Preferred Equity Interests, then the Cash received on account of Liquidating Trust Interests that is distributable to such holder in excess of such one hundred percent (100%) shall be deemed redistributed to, and shared on a *pari passu* basis among, holders of Common Equity Interests and, unless otherwise determined, pursuant to a Final Order, that holders of Dime Warrants hold Allowed Claims and such Allowed Claims are not otherwise subordinated in accordance with section 510 of the Bankruptcy Code, holders of Dime Warrants.”

¹ All terms used but not defined herein shall have the meanings ascribed to them in the Plan.

3. Section 25.1 of the Plan, entitled “*Cancellation of Dime Warrants*” is hereby amended by (a) deleting the word “*Holders*” in the first sentence thereof and (b) inserting the words “*Except as provided in accordance with Sections 23.3 and 24.3 of the Plan, holders*” in lieu thereof.

4. Section 26.1 of the Plan, entitled “*Cancellation of Common Equity Interests*”, is hereby amended by (a) deleting the word “*Holders*” in the first sentence thereof and (b) inserting the words “*Except as provided in accordance with Sections 23.3 and 24.3 of the Plan, holders*” in lieu thereof.

5. Section 32.6 of the Plan, entitled, “*Undeliverable/Reserved Distributions*”, is hereby amended as follows:

(a) The title of Section 32.6(a) of the Plan is hereby (1) renamed to “*Holding of Undeliverable Distributions by the Disbursing Agent*” and (2) renumbered as Section 32.6(a)(1) of the Plan.

(b) A new subsection (a)(2), entitled “*Holding of Undeliverable Distributions by the Liquidating Trustee*”, is hereby inserted and shall provide as follows:

“(a)(2) Holding of Undeliverable Distributions by the Liquidating Trustee. In connection with distributions to be made pursuant to the Liquidating Trust Agreement, an “undeliverable” distribution shall include, without limitation, a check that is sent to a holder in respect of a distribution to such holder, which check has not been negotiated within six (6) months following the issuance thereof. Subject to the provisions of Section 32.6(c) of the Plan, if any distribution to a holder of a Liquidating Trust Interest is undeliverable, no additional distribution shall be made to such holder unless and until the Liquidating Trustee (or its duly authorized agent) is notified, in writing, of such holder’s then-current address. Undeliverable distributions shall remain in the possession of the Liquidating Trustee (or its duly authorized agent) until such time as a distribution becomes deliverable or as set forth in Section 32.6(b) of the Plan. All Entities ultimately receiving an undeliverable distribution shall not be entitled to any interest or other accruals of any kind on account of the delay in payment resulting from the undeliverable status of such distribution. Except as required by law, the Liquidating Trustee (or its duly authorized agent) shall not be required to attempt to locate any holder of a Liquidating Trust Interest.”

(c) Section 32.6(b) of the Plan, entitled “*Failure to Claim Undeliverable Distributions*”, is hereby deleted in its entirety and the following is inserted in lieu thereof:

“(b) Failure to Claim Undeliverable Distributions: If (i) a check is sent, by either the Disbursing Agent or the Liquidating

Trustee, to a holder in respect of a distribution and such check is not negotiated within six (6) months following the date on which such check was issued, or (ii) any other form of distribution to a holder is otherwise undeliverable, the Disbursing Agent or the Liquidating Trustee, as the case may be, (or their duly authorized agent) shall, no later than seven (7) months after the sending of the un-negotiated check or other form of undeliverable distribution, send a written notice (a "Missing Holder Notice") to such holder at the address shown on the books and records of the Debtors or the Liquidating Trustee, as the case may be, with respect to such holder. The Missing Holder Notice shall state that (i) the holder has been sent a check or other form of distribution that has not yet been negotiated or is otherwise undeliverable, (ii) no further distributions will be made to such holder unless and until the Disbursing Agent or the Liquidating Trustee, as the case may be, (or their duly authorized agent) is notified, in writing, of such holder's then-current address, and (iii) unless such holder notifies the Disbursing Agent or the Liquidating Trustee, as the case may be, (or their duly authorized agent) of the holder's then-current address within thirty (30) days of the date of the Missing Holder Notice, such holder shall have its entitlement to such undeliverable distribution cancelled and shall be forever barred from asserting any entitlement with respect thereto pursuant to the Plan, the Liquidating Trust Agreement or otherwise against the Debtors, the Reorganized Debtors, the Liquidating Trust, or their respective property. In such case, any consideration held for distribution on account of such holder shall revert for redistribution to other holders in accordance with the terms and provisions of the Liquidating Trust Agreement, the Plan and the Confirmation Order."

6. Section 42.2 of the Plan, entitled "***Reincorporation***", is hereby amended by (a) deleting the words "prior to or on" in the second line thereof and (b) inserting "no later than one year after" in lieu thereof.

7. Section 42.3 of the Plan, entitled "***Amendment of Articles of Incorporation and By-Laws***", is hereby amended by (a) deleting the words "as of" in the third line thereof and (b) inserting "no later than one year after" in lieu thereof.

8. Section 42.4 of the Plan, entitled "***Directors of the Reorganized Debtors***", is hereby amended by (a) deleting the words "consist of" in the third line thereof and (b) inserting "include no more than" in lieu thereof.

9. Except, as expressly provided herein, the terms and provisions of the Plan shall remain in full force and effect.

Dated: Seattle, Washington
August 10, 2011

WASHINGTON MUTUAL, INC.


By: 

Name: Charles Edward Smith
Title: Executive Vice President &
General Counsel

WMI INVESTMENT CORP.

By: 

Name: Charles Edward Smith
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